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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1940.

JOHN MANGIARACINO,
Petitioner,

vs.

LACLEDE STEEL COMPANY, a Corporation,
Respondent.

No. 835.

RESPONDENT'S BRIEF

Opposing Petition for Writ of Certiorari to the Supreme Court of Missouri.

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INDEX.

Page

Reference to opinion of the Supreme Court of Missouri 1

Jurisdiction 1

Statement of the case 3

Summary of argument 4

Argument 6

I. There is no denial of full faith and credit where the issues presented and the rights and remedies involved in the two cases are entirely different and neither court could have decided the issue which was decided by the other..... 6

II. The Circuit Court of Madison County, Illinois, decided only the issue of whether or not the petitioner was entitled to compensation under the Illinois Workmen's Compensation Act..... 9

III. The Supreme Court of Missouri decided only the issue of whether or not the petitioner was entitled to recover damages in the common-law action 9

IV. The decision in the common-law action would have been the same if both proceedings had been in the same state..... 13

Conclusion 13

Cases Cited.

American Express Co. v. Mullins, 212 U. S. 311..... 8

Ash Sheep Co. v. United States, 252 U. S. 159..... 2, 7

Bishop v. Chicago Rys. Co., 290 Ill. 194, 124 N. E. 837 .....5, 12

Blaine v. Huttig Sash & Door (Mo. App.), 105 S. W. (2d) 946 .....5, 13

Chicago Union Traction Co. v. Albert Giese, 229 Ill. 260, 82 N. E. 232 .....5, 10

Covington v. First National Bank, 198 U. S. 100.... 4, 8

Cramer v. Wilson, 195 U. S. 408 ..... 4, 8
Dailey v. River Raisin Paper Co., 269 Mich. 443, 257 N. W. 857 ..... 5, 13
Davidson v. St. Louis & San Francisco Ry. Co. (Mo. Sup.), 229 S. W. 786 ..... 5, 10
Faber v. Industrial Commission, 352 Ill. 115, 185 N. E. 255 ..... 5, 12
Fauntleroy v. Lum, 210 U. S. 230 8
Mt. Olive & Staunton Coal Co. v. Industrial Commission, 355 Ill. 222, 189 N. E. 296 ..... 5, 12
O'Brien v. Chicago City R. Co., 305 Ill. 244, 137 N. E. 214 ..... 5, 12
Repka v. Fedders Mfg. Co., 267 N. Y. S. (App. Div.) 709, aff. 264 N. Y. 538, 191 N. E. 553 ..... 5, 13
Schuam v. Southwestern Bell Telephone Co., 336 Mo. 228, 78 S. W. (2d) 439 ..... 5, 10
Stevens v. Illinois Central R. R., 306 Ill. 370, 137 N. E. 859 ..... 5, 12
Stryker v. Goodnow, 123 U. S. 527 ..... 4, 8
United States v. Southern Pacific Co., 259 U. S. 213 .. 4, 8
Wright v. Peabody Coal Co., 290 Ill. App. 110, 8 N. E. (2d) 68 ..... 5, 12

Textbooks Cited.

31 Am. Jur., p. 147 4
Restatement, Conflict of Laws, Chap. 10, Sec. 431 8

Statutes Cited.

Sec. 6, Illinois Workmen's Compensation Act, Sec. 143, Chap. 48, Smith-Hurd Ill. Ann. Stat. 5, 11
Sec. 11, Illinois Workmen's Compensation Act, Sec. 148, Chap. 48, Smith-Hurd Ill. Ann. Stat. 5, 11
Sec. 18, Ill. Workmen's Compensation Act, Sec. 155, Chap. 48, Smith-Hurd Ill. Ann. Stat. 2, 4, 9
Sec. 19 (f) (2), Illinois Workmen's Compensation Act, Sec. 156 (f) (2), Chap. 48, Smith-Hurd Ill. Ann. Stat. 2, 4, 9

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RESPONDENT'S BRIEF

Opposing Petition for Writ of Certiorari to the Supreme Court of Missouri.

REFERENCE TO OPINION OF THE SUPREME COURT OF MISSOURI.

The opinion of the Supreme Court of Missouri has not been reported in the official reports. It has been reported in Volume 145, South Western Reporter (2nd), page 388.

JURISDICTION.

Petitioner claims that this Court has jurisdiction to review the decision of the Missouri Supreme Court because there is present a constitutional question involving the denial of full faith and credit to a judgment of a sister state. But it is respectfully submitted that there is no such question in this case. The Missouri Supreme Court expressly gave full faith and credit to the judgment of the Circuit Court of Madison County, Illinois (Rec. p. 124).

The issues in the two cases were entirely different. The issue determined by the Circuit Court of Madison County, Illinois, in the proceeding brought by the petitioner in the county where he received his injury and where he resided, was whether or not petitioner was entitled to compensation under the Illinois Workmen's Compensation Act (Rec. p. 73). The issue decided by the Missouri Supreme Court, in the suit brought by the petitioner in Missouri, was whether or not the petitioner was entitled to recover damages in a common-law action (Rec. p. 125). The Circuit Court of Madison County, Illinois, in the workmen's compensation proceeding, did not attempt to decide whether or not the petitioner had any common-law action for damages; nor could that issue possibly have been decided in that case. **Section 19 (f) (2) of the Illinois Workmen's Compensation Act, Section 156 (f) (2), Chap. 48, Smith-Hurd Ill. Ann. Stat.** The Missouri Supreme Court, in the common-law action, did not attempt to decide whether or not the petitioner was entitled to recover compensation under the Illinois Workmen's Compensation Act; nor could that issue possibly have been decided in that case. **Section 18, Illinois Workmen's Compensation Act, Section 155, Chap. 48, Smith-Hurd Ill. Ann. Stat.** The question decided in the Missouri case did not become res adjudicata in the Illinois case since it was not and could not have been made an issue in the Illinois case. The issue of denial of full faith and credit cannot arise with respect to a matter which is not res adjudicata. The issues in the two cases being entirely different, there could be no denial by the Supreme Court of Missouri of full faith and credit to the decision of the Circuit Court of Madison County, Illinois. **Ash Sheep Co. v. United States, 252 U. S. 159;** and there is no federal question present to bring this proceeding within the jurisdiction of this Court. Title 28, Section 344, U. S. C. A.

STATEMENT OF THE CASE.

The respondent deems it necessary to make the following statement supplementing the statement of the petitioner:

The respondent, in stipulating that the allegations, relating to the proceedings in the Illinois Workmen's Compensation case, contained in the reply filed by the petitioner in the Missouri case, were accurate, did so subject to respondent's objection that said proceedings were irrelevant to any issue involved in the Missouri case (Rec. pp. 83-84).

The peitioner, in his petition filed in the Missouri case, alleged that:

> "* * * he was in the employ of defendant in its aforesaid mill or plant in Granite City, Illinois, and that on or about said date plaintiff was in and upon the aforesaid premises" (Rec. p. 2).

The charge of negligence upon which the petitioner relied and upon which he was permitted to go to the jury was:

> "1. Defendant negligently and carelessly caused, suffered and permitted the electric current of said machinery in said hotbed No. 2 to be and remain on and negligently caused, suffered and permitted the main switch to said machinery to be connected or engaged, all in violation of the duly promulgated rule and custom of the defendant's said mill" (Rec. p. 3).

The instruction upon which the petitioner went to the jury required the jury to find that the petitioner was in the employ of the respondent, upon its premises, and submitted the aforesaid charge of negligence (Rec. pp. 103, 104).

The petitioner did not plead nor make any attempt to prove that the respondent breached any duty which it owed to him, or even that it had any duty to petitioner, independent of the relationship of master and servant (Rec. p. 122).

SUMMARY OF ARGUMENT.

There was no denial of full faith and credit here because the issue determined by the Circuit Court of Madison County, Illinois, was entirely different from that decided by the Supreme Court of Missouri and neither court could have decided the issue which was decided by the other.

I.

There is no denial of full faith and credit where the issues presented and the rights and remedies involved in the two cases are entirely different and neither court could have decided the issue which was decided by the other.

Ash Sheep Co. v. United States, 252 U. S. 159;
31 Am. Jur., p. 147;
Stryker v. Goodnow, 123 U. S. 527;
Covington v. First National Bank, 198 U. S. 100;
Cramer v. Wilson, 195 U. S. 408;
United States v. Southern Pacific Co., 259 U. S. 213.

II.

The Circuit Court of Madison County, Illinois, decided only the issue of whether or not the petitioner was entitled to compensation under the Illinois Workmen's Compensation Act.

Section 19 (f) (2), Illinois Workmen's Compensation Act, Section 156 (f) (2), Chap. 48, Smith-Hurd Ill. Ann. Stat.

III.

The Supreme Court of Missouri decided only the issue of whether or not the petitioner was entitled to recover damages in the common-law action.

Sec. 18, Ill. Workmen's Compensation Act, Sec. 155, Chap. 48, Smith-Hurd Ill. Ann. Stat.;

Chicago Union Traction Co. v. Albert Giese, 229 Ill. 260, 82 N. E. 232;
Davidson v. St. Louis & San Francisco Ry. Co. (Mo. Sup.), 229 S. W. 786;
Schuam v. Southwestern Bell Telephone Co., 336 Mo. 228, 78 S. W. (2d) 439;
Sec. 6, Illinois Workmen's Compensation Act, Sec. 143, Chap. 48, Smith-Hurd Ill. Ann. Stat.;
Sec. 11, Illinois Workmen's Compensation Act, Sec. 148, Chap. 48, Smith-Hurd Ill. Ann. Stat.;
O'Brien v. Chicago City R. Co., 305 Ill. 244, 137 N. E. 214;
Stevens v. Illinois Central R. R., 306 Ill. 370, 137 N. E. 859;
Faber v. Industrial Commission, 352 Ill. 115, 185 N. E. 255;
Mt. Olive & Staunton Coal Co. v. Industrial Commission, 355 Ill. 222, 189 N. E. 296;
Wright v. Peabody Coal Co., 290 Ill. App. 110, 8 N. E. (2d) 68;
Bishop v. Chicago Rys. Co., 290 Ill. 194, 124 N. E. 837.

IV.

The decision in the common-law action would have been the same if both proceedings had been in the same state.

Blaine v. Huttig Sash & Door (Mo. App.), 105 S. W. (2d) 946;
Dailey v. River Raisin Paper Co., 269 Mich. 443, 257 N. W. 857;
Repka v. Fedders Mfg. Co., 267 N. Y. S. (App. Div.) 709, aff. 264 N. Y. 538, 191 N. E. 553.

ARGUMENT.

I.

Petitioner seeks to invoke the jurisdiction of this Court upon the claim that the full faith and credit clause of the Constitution of the United States has been violated by the decision of the Missouri Supreme Court, which petitioner alleges failed to give full faith and credit to the decision of the Circuit Court of Madison County, Illinois. The petitioner states the question thus:

> "This, then, leads us to the following proposition: Can a Missouri court go behind the Illinois judgment, which has been duly pleaded and proved, and inquire into the merits of the original cause of action to determine if the Illinois court ruled correctly? (and petitioner answers) We think that the Missouri court has no such power, but must, on the other hand, recognize and support the Illinois decree, which conclusively determines that your petitioner had no right to recover under the provisions of the Illinois Workmen's Compensation Act" (Petitioner's supporting brief, page 16).

We submit that no such question is presented by this record. The Missouri court made no attempt to go behind the Illinois judgment or to inquire into the merits of the original cause of action to determine if the Illinois court ruled correctly or for any other purpose. The Missouri court was not concerned with whether or not the petitioner had any right to recover under the Illinois Workmen's Compensation Act.

That the parties were subject to the Illinois Workmen's Compensation Act was admitted (Rec. p. 84); the petitioner filed his claim under that act and in that proceeding the Circuit Court of Madison County, Illinois, held that he was not entitled to recover. It did not, and it could not, hold

that the petitioner was entitled to recover damages in a common-law action.

Thereupon the petitioner came into the State of Missouri and filed an action for damages at common law. In that action, the Supreme Court of Missouri, by the decision which the petitioner asks this Court to review, held that the petitioner was not entitled to recover damages at common law. It did not, and it could not, hold that the petitioner was entitled to recover compensation under the Illinois Workmen's Compensation Act.

Since the Circuit Court of Madison County, Illinois, did not attempt to determine whether or not the petitioner could recover at common law, and it could not have done so, and since the Supreme Court of Missouri did not attempt to determine whether or not the petitioner could recover compensation under the Illinois Workmen's Compensation Act, and it could not have done so, there could not possibly be any denial of full faith and credit involved in these proceedings.

In the case of **Ash Sheep Company v. United States, 252 U. S. 159**, this Court said:

> "We agree with the Court of Appeals that 'a judgment is not conclusive of any question which, from the nature of the case or the form of action, could not have been adjudicated in the case in which it was rendered.'"

The rule is stated briefly in **31 American Jurisprudence, page 147**:

> "Obviously, if the judgment is not effective as res judicata in the state in which the judgment was rendered, it need not be given effect as res judicata in other states. Accordingly, full faith and credit is not denied a judgment of a sister state by a refusal to treat the judgment as res judicata in regard to a dif-

ferent cause of action, or in regard to an issue not involved and determined in the previous action involving a different cause of action."

This is supported by the following decisions of this Court:

Stryker v. Goodnow, 123 U. S. 527;
Covington v. First National Bank, 198 U. S. 100;
Cramer v. Wilson, 195 U. S. 408;
United States v. Southern Pacific Co., 259 U. S. 213.

Petitioner, in his supporting brief, asserts that his claim, that the full faith and credit provision of the Constitution has been infringed by the Missouri decision, is supported by the following authorities, with the principles of which the Missouri decision is alleged to be in conflict:

American Express Co. v. Mullins, 212 U. S. 311;
Fauntleroy v. Lum, 210 U. S. 230;
Restatement, Conflict of Laws, Chap. 10, Sec. 431.

Petitioner does not discuss the first case cited above and we see no reason why it is relevant.

The case of Fauntleroy v. Lum, supra, is a typical full faith and credit case in which a judgment was obtained in Missouri and sued on in Mississippi. The validity of the judgment was attacked on the ground that it had resulted from an error of law. It was, of course, held that the judgment of the Missouri court was enforceable in Mississippi and that it could not be impeached even if based on an error of law.

The citation from the Restatement is to the same effect.

It is impossible to understand how these authorities tend in any way to support petitioner's contention that there is any issue of full faith and credit involved here, or that there is any conflict between the principle of Fauntleroy v. Lum, supra, and the decision of the Missouri court, which he asks this Court to review.

II.

Petitioner resides in Madison County, Illinois (Rec. p. 34), and received the injury of which he complained in that county and state. He filed his complaint with the Industrial Commission of Illinois, which had exclusive jurisdiction of proceedings for the recovery of compensation under the Illinois Workmen's Compensation Act. **Section 18, Illinois Workmen's Compensation Act, Section 155, Chap. 48, Smith-Hurd, Ill. Ann. Stat.** The proceeding reached the Circuit Court of Madison County, Illinois, the jurisdiction of which was limited by **Section 19 (f) (2), Illinois Workmen's Compensation Act, Section 156 (f) (2), Chap. 48, Smith-Hurd, Ill. Ann. Stat.**, as follows:

> "The Court may confirm or set aside the decision of the Industrial Commission. If the decision is set aside and the facts found in the proceedings before the Commission are sufficient, the Court may enter such decision as is justified by law, or may remand the cause to the Industrial Commission for further proceedings and may state the questions requiring further hearing, and give such other instructions as may be proper."

Plainly, therefore, the issue of whether or not the petitioner had a cause of action at common law was not and could not be decided by the Circuit Court of Madison County, Illinois.

III.

Petitioner thereupon came into Missouri and filed suit to recover damages in a common-law action. Since the Industrial Commission of Illinois had exclusive jurisdiction of proceedings under the Illinois Workmen's Compensation Act **(Section 18, Illinois Workmen's Compensation Act, Section 155, Chap. 48, Smith-Hurd, Ill. Ann. Stat.)**, the issue of whether or not petitioner was entitled to compensation under that act could not in any event have been de-

cided by the Missouri courts. The issue in the Missouri case was whether or not the petitioner was entitled to damages in the common-law action. Since the alleged cause of action arose in Illinois the Illinois law applied to the extent that it was pleaded and proved in the Missouri case. The petitioner did not plead or prove the common law of Illinois, but in both Illinois and Missouri negligence arises only from a breach of duty.

Chicago Union Traction Co. v. Albert Giese, 229 Ill. 260, 82 N. E. 232;
Davidson v. St. Louis & San Francisco Ry. Co. (Mo. Sup.), 229 S. W. 786;
Schaum v. Southwestern Bell Telephone Co., 336 Mo. 228, 78 S. W. (2d) 439.

It follows that the burden was upon the petitioner to plead and prove a breach of duty on the part of respondent which would afford a basis for a common-law action. This burden the petitioner failed to carry. He alleged that he was in the employ of the respondent upon its mill premises (Rec. p. 2), and that the respondent negligently violated a rule of its mill by permitting the main switch to certain machinery to be connected (Rec. p. 3). The only issue submitted to the jury was based upon those allegations (Rec. pp. 103, 104). Therefore it was necessary for the Missouri Supreme Court, in reviewing the judgment of the trial court, to determine whether or not the alleged violation of the said rule was an act of negligence which would afford the petitioner a cause of action. To decide that question it was necessary, first, to decide whether or not the respondent owed the petitioner any duty with respect to the said machinery and, if so, the nature of that duty. This the Supreme Court of Missouri did in the following language from its opinion:

> "It is argued that this made a case for the jury, because 'plaintiff was an invitee of the defendant, and, as such, defendant owed him the duty of exercising

ordinary care for his safety while he was within the limits of the invitation.' Plaintiff cites no cases under this point, but it is clear from his argument that the only basis for plaintiff's invitation was his employment. (Plaintiff's argument says: 'Here we have a man who, during his working hours, was at a place he had every right to be.') Certainly he was not invited upon the premises, or any part thereof, for any other reason than to work there for defendant, or between tasks, to await his next task there. Obviously, that is the only basis of invitation the evidence warrants. Likewise, the only duty of defendant on such occasion, which could be the basis of a negligence case, is the duty an employer owes to his employee'' (Rec. p. 122).

The conclusion of the Court was the only one possible on the record before it, because the petitioner did not sue as a member of the general public and did not plead or prove any facts which would give rise to a duty owing by the respondent to the petitioner and not growing out of the relationship of master and servant.

The Missouri Supreme Court held, therefore, as it was bound to hold, that the petitioner had neither pleaded nor proved any cause of action which was independent of the relationship of master and servant. The question, then, was whether or not the alleged breach of duty, dependent as it was upon the relationship of master and servant, constituted a common-law cause of action for damages in the State of Illinois. Under the Illinois Workmen's Compensation Act, common-law actions to recover damages for injuries sustained by an employee in the course of his employment are abolished.

Section 6, Illinois Workmen's Compensation Act, Section 143, Chap. 48, Smith-Hurd, Ill. Ann. Stat.;

Section 11, Illinois Workmen's Compensation Act, Section 148, Chap. 48, Smith-Hurd, Ill. Ann. Stat.;

O'Brien v. Chicago City R. Co., 305 Ill. 244, 137 N. E. 214;
Bishop v. Chicago Rys. Co., 290 Ill. 194, 124 N. E. 837;
Stevens v. Illinois Central R. R., 306 Ill. 370, 137 N. E. 859;
Faber v. Industrial Commission, 352 Ill. 115, 185 N. E. 255;
Mt. Olive & Staunton Coal Co. v. Industrial Commission, 355 Ill. 222, 189 N. E. 296;
Wright v. Peabody Coal Co., 290 Ill. App. 110, 8 N. E. (2) 68.

The Supreme Court of Missouri had no jurisdiction over, and no concern with, the question of whether or not petitioner was entitled to receive compensation under the Illinois Workmen's Compensation Act, but it did have jurisdiction over, and it was concerned with, the question of whether or not the petitioner had a common-law action, which had not been abolished by the Illinois Workmen's Compensation Act; in other words, whether or not the petitioner had pleaded and proved a breach of a duty owing by the respondent to the petitioner as a member of the general public, or otherwise, not dependent upon the relationship of master and servant. The Missouri Supreme Court answered this question by holding that petitioner could not prove a common-law action with evidence which tended to show only a possible right to compensation under the Illinois Workmen's Compensation Act. Whether or not the petitioner had any rights under the Illinois Workmen's Compensation Act was not before the Court, but whether or not the petitioner had any cause of action at common law and independent of the relationship of master and servant was before the Court, and the Court held, as it was bound to hold, that the pleading and proof wholly failed to show any such common-law cause of action.

IV.

Why the petitioner chose to come to Missouri to bring the common-law action is not apparent from the record, but the question to be determined was not thereby changed. If he had filed his common-law action in Illinois, where he resided and where he received the injury, it would have been necessary still for him to plead and prove some duty on the part of respondent which did not arise out of the relationship of master and servant, and this he was unable to do. It would be absurd to contend that a common-law action sprang into existence by reason of the decision of the Circuit Court of Madison County, Illinois, and without proof of some common-law negligence which was not dependent upon the relationship of master and servant.

Blaine v. Huttig Sash & Door (Mo. App.), 105 S. W. 946;

Dailey v. River Raisin Paper Co., 269 Mich. 443, 257 N. W. 857;

Repka v. Fedders Mfg. Co., 267 N. Y. S. (App. Div.) 709, aff. 264 N. Y. 538, 191 N. E. 553.

CONCLUSION.

Petitioner's contention is that the decision of the Circuit Court of Madison County, Illinois, that petitioner was not entitled to compensation under the Illinois Workmen's Compensation Act, inasmuch as his injuries did not arise out of and in the course of his employment within the meaning of those words as used in the Illinois Compensation Act, was not open to question. For the purpose of this proceeding, this may be conceded, nor is there anything to the contrary in the decision of the Missouri Supreme Court. This ruling of the Illinois Circuit Court, however, did not dispense with the necessity for petitioner to show that he had some other right of recovery. This he attempted to do by showing only an alleged breach of a

duty which was dependent upon the master and servant relationship, and the Missouri Supreme Court, following the decisions of the Illinois Supreme Court, held, as it was bound to hold, that all common-law right of action by a servant against a master arising out of that relationship had been abolished by the Illinois Compensation Act. Therefore, since petitioner had sought to present no case, except such as was abolished by the Illinois Compensation Act, under the Illinois decisions he failed to make a case at common law.

It is respectfully submitted that there is no merit in the petition for a writ of certiorari, and that the writ should be denied.

Respectfully submitted,

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